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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.												
09/755,488	01/05/2001	Roger P. Hoffman	P/2-87	5105												
7590 Philip M. Weiss, Esq. Weiss & Weiss Suite 251 300 Old Country Road Mineola, NY 11501		05/30/2007	<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">ROSEN, NICHOLAS D</td></tr><tr><td>ART UNIT</td><td>PAPER NUMBER</td></tr><tr><td>3625</td><td></td></tr><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>05/30/2007</td><td>PAPER</td></tr></table>		EXAMINER		ROSEN, NICHOLAS D		ART UNIT	PAPER NUMBER	3625		MAIL DATE	DELIVERY MODE	05/30/2007	PAPER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/755,488	<b>Applicant(s)</b> HOFFMAN, ROGER P.	
	<b>Examiner</b> Nicholas D. Rosen	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-8, 11, and 14-20 have been examined.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

### **Claims 1-7, 19, and 20**

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz ("An Auction with the Buyer Completely in Charge") in view of the anonymous article, "Western Energy, Inc., Acquires 51% of GETBIDS.COM," hereinafter "Western Energy." As per claim 1, Baatz discloses a method for a buyer to request a quotation, the method comprising: inputting or choosing attributes of a specific product into a database (second and third columns on page S58); inputting the quantity of product (ibid., and first column on S61); inputting delivery specifications (second column on page S58); selecting suppliers to whom to submit the request for quotation (third column on S58); and submitting said request for quotation to said suppliers (third column on S58). Baatz is not explicit about the database as such, but the disclosure of the retention and availability of information inherently requires a database of some sort, while the disclosed online interaction suggests an electronic database. Baatz does not disclose a buyer directly selecting suppliers to whom to submit a request for quotation,

but "Western Energy" teaches this (first paragraph). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the buyer to directly select suppliers to whom to submit a request for quotation, for the obvious advantage of enabling the buyer to select any suppliers (at least, any suppliers from a list) whom the buyer considers suitable, while excluding any suppliers whom the buyer may consider unsuitable (e.g., because of previous bad experiences).

As per claim 6, Baatz discloses that said request for quotation has an expiration mechanism ("time limit for bidding (as specified by the buyer)") in the third column of page S58).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz and "Western Energy" as applied to claim 1 above, and further in view of official notice. Baatz does not disclose that the quotation (or request for quotation) is submitted to the suppliers via a wireless method, but official notice is taken that it is well known for information to be transmitted via wireless methods (e.g., to and from cell phones, microwave transmission of Internet data, etc.). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the request for quotation to be submitted to the suppliers via a wireless method, for the obvious advantage of making the request for quotation readily available to suppliers in contact with a communications network at least in part via wireless means.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz and "Western Energy" as applied to claim 1 above, and further in view of Breen, Jr., et al.

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(U.S. Patent 6,598,027). Baatz does not disclose the supplier analyzing said quotation with a logistics database to provide freight quotes, but Breen teaches a database accessible to a supplier for providing freight quotes to suppliers and buyers (column 7, lines 19-64; column 10, lines 37-39). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the supplier to analyze said quotation with a logistics database to provide freight quotes, for the obvious advantage of enabling the supplier to set appropriate bids including freight costs.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz and "Western Energy" as applied to claim 1 above, and further in view of Giovannoli (U.S. Patent 5,758,328). Baatz does not disclose that at least one of the suppliers provides a quotation directly to the buyer, but Giovannoli teaches a rather similar system in which suppliers can provide quotations directly to the buyer (column 2, line 65, through column 3, line 4). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for at least one of the suppliers provides a quotation directly to the buyer, for the obvious advantage of allowing the buyer to select, if he so chooses, from all quotations which any suppliers care to send in response to the buyer's RFQ, and select the most advantageous quotation on whatever basis or bases the buyer wishes.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz, "Western Energy," and Giovannoli as applied to claim 4 above, and further in

view of official notice. As per claim 5, Claim 5 is held to be obvious for essentially the reasons set forth above regarding claim 2.

As per claim 7, Baatz discloses comparing quotations from different suppliers (third column of page S58; first column of page S61), but does not expressly disclose that this is done with regard to the attributes of a specific product, the quantity of the product, and the delivery specifications. However, Baatz discloses introducing the three lowest bidders to the buyer, rather than simply selecting the lowest (page S58, column 3), implying that decisions may be made on the basis of factors other than price, and Baatz discloses an RFQ for a particular quantity of a specific product, to be delivered to different cities (page S61, first column), implying evaluating quotes on such criteria. Official notice is taken that it is well known to compare quotes from different suppliers on such bases as specific attributes, quantity, and delivery specifications. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to compare the quotation from at least one supplier to quotations from other suppliers with regard to these factors, for the obvious advantage of choosing the most suitable supplier for the buyer's wants.

Claims 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz and "Western Energy" as applied to claim 1 above, and further in view of official notice. As per claim 19, Baatz does not disclose copying agreed upon terms into a purchase order, but Baatz does teach carrying out a purchase after a supplier has submitted terms, and been accepted by the buyer (third column of S58; page S61); and official notice is taken that it is well known to copy information. Hence, it would have

been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to copy agreed upon terms into a purchase order, for the obvious advantage of arranging and documenting a purchase according to agreed upon terms, without the trouble of rewriting the same information.

As per claim 20, claim 20 recites essentially the same elements as claim 7, and is rejected on the same grounds as claim 7, as set forth above.

**Claims 8, 11, and 14-18**

Claims 8 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz in view of Feldman ("Customer Service Is Prime Spot for ISDN") and official notice. As per claim 8, Baatz discloses a system for a buyer to request a quotation, the system comprising: a request for quotation form (second column on page S58); and a means for delivering said request for quotation form to a seller (second and third columns on page S58). Baatz discloses storing quotations from sellers; and allowing the buyer to compare said quotations (second and third columns on page S58). Baatz is not explicit about the system comprising a database as such, but the disclosure of the retention and availability of information inherently requires at least one database of some sort. Baatz does not expressly disclose that said request for quotation form comprises a list of product specifications, but does disclose that, "The item as well as payment and delivery terms must be specified precisely," and discloses "a form online with detailed questions for the buyer to answer about the RFQ." Official notice is taken that lists are well known for specifying pluralities of details. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of

applicant's invention for the form to comprise such a list, for the obvious advantage of making the various specifications conveniently available to potential sellers.

Arguably, Baatz discloses a means for delivering said request for quotation form to a seller directly (second and third columns on page S58), in that the RFQ form is delivered directly from Sorcity to the sellers. On the interpretation that the RFQ form must be delivered directly from the buyer to a seller, Baatz does not disclose this, but it is well known to send RFQ's directly from buyers to sellers, as taught, for example, by Feldman (three paragraphs beginning from "In companies with multiple supply sources"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to deliver the RFQ form to the seller directly, for the obvious implied advantage of speeding and simplifying the "third most wanted application" of procurement.

As per claim 15, Baatz does not disclose a system for performing a credit check of a buyer (although Baatz does disclose asking for detailed information about buyers, first column of page S58), but official notice is taken that performing credit checks on buyers is well known. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a system, for the obvious advantage of not selling valuable items to insolvent or untrustworthy purchasers.

As per claim 16, Baatz does not disclose a database of buyer credit profiles (although Baatz does disclose asking for detailed information about buyers, first column of page S58), but official notice is taken that maintaining such buyer credit profiles is



well known. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include a database of buyer credit profiles in the system, for the obvious advantage of judging the creditworthiness of buyers, and not selling valuable items to insolvent or untrustworthy purchasers.

As per claim 17, Baatz does not disclose a database comprising a listing of previous sales, but official notice is taken that it is well known to maintain records of previous sales. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the system to comprise a database comprising a listing of previous sales, for such obvious advantages as checking sellers' records of delivering products as advertised and on schedule, and buyers' records of paying as promised.

As per claim 18, Baatz does not disclose a searchable database of buyer/seller quote history, but does disclose that buyers can watch the bidding process (third column on page S58), showing that a quote history is maintained to some degree; and official notice is taken that searchable databases are well known. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the system to include a searchable database of buyer/seller quote history, for such obvious advantages as resolving any disputes that may arise on bidding, and analyzing the operations of the system with a view toward improvements.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz and official notice, or in the alternative, Baatz, Feldman, and official notice, as applied to claim 8 above, and further in view of Breen, Jr., et al. (U.S. Patent 6,598,027). Claim 11

is essentially parallel to claim 3, and rejected on the same grounds set forth above in rejecting claim 3.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz and official notice, or in the alternative, Baatz, Feldman, and official notice, as applied to claim 8 above, and further in view of the article, "Robertson, Stephens Founder Sanford R. 'Sandy' Robertson Invests in LIMITrader Securities; Takes Stake in New York Firm Pioneering Electronic Bond Trading," hereinafter "Robertson". Baatz does not disclose that the system comprises a secured chat room, but "Robertson" teaches a trading system including a secure chat room for the buyer and seller to negotiate in (paragraph beginning "LIMITrader.com's online bond trading solution"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include a secured chat room, for the stated advantage of facilitating negotiations between the buyer and the seller.

It is noted that claim 8 uses "means for" language. Nonetheless, it is not treated as invoking 35 U.S.C. 112, sixth paragraph. If Applicant wishes to invoke 35 U.S.C. 112, sixth paragraph, Applicant should provide an explicit statement to that effect. 35 U.S.C. 112, sixth paragraph states:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

***Response to Arguments***

Applicant's arguments filed March 19, 2007 have been fully considered but they are not persuasive. First, in regard to the rejections of claim 8 and its dependents under 35 U.S.C. 112, first paragraph and second paragraph, Applicant's arguments are treated as affirming that in claim 8, "a means for delivering said request for quotation form to a seller directly," is to be interpreted as meaning "a means for delivering said request for quotation form to a seller directly from a buyer."

Next, in traversing the 103 rejection of claim 1, Applicant argues that in the article by Baatz, an RFQ is delivered to the broker, Sorcity, and then delivered to Sorcity members (such as potential sellers), which, in Applicant's view, makes it improper to combine Baatz with "Western Energy," where buyers and sellers are directly connected. Applicant states that in Baatz, the buyer and seller cannot communicate directly until Sorcity is paid its 2% commission. Examiner replies that first, this is not an entirely accurate description of Baatz, and secondly, the system of Baatz is not in conflict with "Western Energy."

As to the first point, Baatz discloses, "Sellers can ask questions to clarify the RFQ via e-mails with Sorcity" (page S58, first column), and discloses that the three lowest bidders are introduced to the buyer (ibid.), implying that communication between the buyer and the bidders is possible. Baatz then discloses, "Only after the buyer selects the winning bid and confirms the selection with Sorcity is the 2% commission then collected from the seller," which is not the same as saying that "the buyer and the

seller cannot communicate directly until Sorcity is paid their 2% commission," as Applicant characterizes Baatz.

Secondly, "Western Energy" discloses, "GETBIDS will receive processing fees on each transmitted bid." Therefore, a system where RFQ's are directly transmitted to sellers is not incompatible with a broker receiving commissions.

In response to applicant's argument that, "You cannot modify Baatz with Western Energy since that would take out the payment system required by Baatz," the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Baatz and "Western Energy" are held to be quite sufficiently suggestive to those of ordinary skill in the art, especially in view of "Western Energy's" teaching of a payment system which has not been taken out.

On similar grounds, Applicant's argument (page 7 of the Remarks) that Baatz cannot be combined with Giovannoli is held to be mistaken.

On page 9 of the Remarks, Applicant argues that claim 20 differs substantially from claim 7, because claim 7 only states that the quotations are compared, not rated. Examiner replies that in context, comparison can be viewed as implying rating, in that if one compares several quotations, one is implicitly rating them on such relevant criteria as product specifications and delivery specifications, which are recited in claim 7.

Moreover, as set forth in the rejection of claim 7, Baatz discloses introducing the three lowest bidders to the buyer, implying that decisions may be made on the basis of factors other than price; when the buyer selects one of those three as the winning bid, the buyer rates it as superior, on some basis, to the other two bids.

In traversing the rejection of claim 14, Applicant argues that Baatz specifically teaches away from the buyer and seller directly communicating with each other (and therefore cannot be properly combined with Feldman). As Examiner has set forth above, with regard to claim 1, this is not really the case.

The common knowledge or well-known in the art statements in the previous office action are taken to be admitted prior art, because Applicant did not traverse Examiner's taking of official notice.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith, can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Nicholas D. Rosen*  
NICHOLAS D. ROSEN  
PRIMARY EXAMINER

May 24, 2007